IN THE HIGH COURT OF BOMBAY AT PANAJI

CRIMINAL WRIT PETITION NO. 21 OF 2007

Shri Sher Singh
Prisoner No. 782,
Central Jail,
Aguada-Goa. ... Petitioner

V/s

1. State of Goa,
Through the Under Secretary
of Home Department,
Secretariat, Porvorim-Goa.

2. Inspector General of Prisons,
Collectorate, North -Goa,
Panaji-Goa.

3. The Superintendent of prisons,
Central Jail,
Aguada-Goa. .... Respondents

Ms. Asha Dessai, Advocate for the Petitioner.

Ms. W. Coutinho, Public Prosecutor for the Respondents.

Coram : N.A. BRITTO, J.

Date : 27th July, 2007

ORAL ORDER :

Heard Ms. Dessai, the learned Counsel on behalf of the Petitioner and Ms. W. Coutinho, the learned Public Prosecutor on behalf of the Respondents.

2. The Petitioner is a convict who is undergoing sentence of twelve years under Section 20(b)(ii)(C) of the NDPS Act with effect from 10/02/2005.

3. The Petitioner by his application dated 22/06/2006 sought for his release on parole for a period of sixty days but the application came to be rejected by order dated 24/04/2007 and which order is assailed in this petition.

4. The Government in dismissing the application has taken note of the fact that the prisoner was native of Kullu, Himachal Pradesh and, therefore, there was every possibility that he may take opportunity and jump the parole. At the same time it is also noted in the said order that an inquiry was made through the Pradhan of the Gram Panchayat at Arsu and who had reported that the problem of the Petitioner's father that he was under treatment was genuine. In fact the Petitioner alongwith his application had filed medical certificate issued by the Medical Officer, Regional Hospital, Kullu stating that the Petitioner's father was suffering from stricture urethera and was undergoing treatment at the Regional Hospital, Kullu where he was required to undergo surgery and for that attendant was necessary to look after him during the said ailment.

5. The Respondents have not filed any affidavit-in-reply opposing the

petition, but it is contended on behalf of the Respondents, by the learned Public Prosecutor that the case of the Petitioner does not fit in in Rule 324 of the Goa Prison Rules, 2006. On the other hand, the learned Advocate Ms. Dessai has submitted that the fact that the Petitioner's father is suffering from a serious illness was verified by the Respondents through the Pradhan of the Gram Panchayat at Arsu and, therefore, there was no reason for the Respondents to have rejected the application. Learned Counsel further submits that in case the Respondents apprehend that the Petitioner may not report back then the Petitioner could be put to terms in that the Petitioner could be directed to report to the Police Station every alternate day.

6. In the case of ***M. Rajender alias Raju V/s. State of A.P. (1998 CRI.L.J. 3137)*** it has been stated that when grant of parole is refused by the Government, inherent powers under Section 482 of the Code or Review jurisdiction under Article 226 of the Constitution could be exercised in the interest of justice to pass an order and to grant parole. It is also stated that the Court has power to see whether the Government had exercised its jurisdiction under the Rules in accordance with law and in a fair and reasonable manner. It is also stated that if Government has considered all aspects of matter and has rejected the parole in accordance with the Rules then the Court's interference would not be justified.

7. In the case of ***Tara Chand V/s. State of Rajasthan (1990 (Supp) SCC 56)*** a life convict was enlarged on parole to enable him to appear for M.A. (Previous) Sociology examination from April 27, 1989 to May 20, 1989.

8. Rule 324 provides as to when parole is to be granted. It states that parole may be granted to a prisoner in the event of emergent situations like death or serious illness of father, mother, brother, sister, spouse and children and also marriage of brother, sister and children. The question is whether the Petitioner's father could be considered to be suffering from an serious illness. The Petitioner's father, as disclosed in the medical certificate is suffering from stricture of the ureterra and is under treatment at the Regional Hospital, Kullu, H.P. and is required to undergo surgery and for that an attendant is necessary. Not every illness is serious. Serious, inter alia, means important, weighty. An illness which is likely to permanently or materially impair, the health of the prisoner could be considered to be serious. Considering the illness of the Petitioner's father, as certified by the Medical Officer, Regional Hospital, Kullu and by the Pradhan of the Gram Panchayat at Arsu, the Petitioner ought to have been granted parole as prayed for. The Government does not appear to have exercised its discretion rightly considering the medical report as well as the report of the Pradhan which had further certified that the problem of the Petitioner's father was genuine.

9. Considering that facts of the case, in my view, the Petitioner ought to have been granted parole sought for by him. The impugn order dated 24/04/2007 is therefore, hereby set aside and Respondent No.2 is hereby directed to release the Petitioner on parole for a period of forty five days and with the condition that upon execution of a bond of Rs. 15,000/- with one surety in the like amount and with the further condition that the Petitioner shall report to the nearest police station at Kullu every alternate day. Needless to observe, a copy of this order shall be sent to the said Police Station by Respondent No.2.

10. Petition is allowed on the above terms.

N.A. BRITTO, J.

NH/-